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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 BANK OF AMERICA, N.A., successor by
8 merger to BAC HOME LOAN SERVICES, LP
9 f/k/a COUNTRYWIDE HOME LOANS
SERVICING, LP,

10 Plaintiff,

11 v.

12 WESTTROP ASSOCIATION, *et al*,

13 Defendants.

Case No. 2:16-cv-01451-KJD-CWH

ORDER

14 **I. Background and Analysis**

15 This case emerges from the non-judicial foreclosure sale by Defendant Westtrop
16 Association on or about November 1, 2013 of the property located at 5155 West Tropicana
17 Avenue #2033, Las Vegas, Nevada (“the Property”). This case shares a similar fact pattern with
18 many cases currently pending before this Court, all having to do with HOA foreclosure sales.
19 One of the issues before the Court centers in whole or in part around the question of what notice
20 of default the foreclosing party was required to provide Plaintiff prior to its foreclosure sale on
21 the Property. After the Nevada Supreme Court’s decision in SFR Invs. Pool 1, LLC v. U.S.
22 Bank, the Ninth Circuit decided Bourne Valley Court Trust v. Wells Fargo Bank, NA, 832 F.3d
23 1154, 1160 (9th Cir. 2016) (holding NRS 115.3116(2)’s statutory notice scheme was facially
24 unconstitutional).

25 On April 21, 2017, in Bank of New York Mellon v. Star Hills Homeowners Ass’n, this
26 Court certified the following question to the Nevada Supreme Court: “Whether NRS §
27 116.31168(1)’s incorporation of NRS § 107.090 requires homeowners associations to provide
28 notices of default to banks even when a bank does not request notice?” Bank of New York

1 Mellon v. Star Hill Homeowners Ass’n, 2017 WL 1439671, at *5 (D. Nev. April 21, 2017).

2 In granting certification, the Court reasoned the following: In Bourne Valley, the Ninth
3 Circuit definitively answered the question that the statute’s “opt-in” framework was
4 unconstitutional. Bourne Valley Court Trust v. Wells Fargo Bank, NA, 832 F.3d 1154, 1160 (9th
5 Cir. 2016). However, that left the Court with the unresolved question of what notice must be
6 provided. “It is solely within the province of the state courts to authoritatively construe state
7 legislation.” Cal. Teachers Ass’n v. State Bd. of Educ., 271 F.3d 1141, 1146 (9th Cir. 2001). As
8 such, state law questions of first impression like this one should be resolved by the state’s
9 highest court. See Huddleston v. Dwyer, 322 U.S. 232, 237 (1944).

10 On August 2, 2018, the Supreme Court of Nevada answered the certified question. See
11 SFR Invs. Pool 1, LLC v. Bank of New York Mellon, 422 P.3d 1248 (Nev. 2018). Further, it has
12 since issued two new opinions that bear on the issues in this action. See Wells Fargo Bank, N.A.
13 v. Tim Radecki, 2018 WL 4402403 (Nev. September 13, 2018); Bank of America, N.A. v. SFR
14 Invs. Pool 1, LLC, 2018 WL 4403296 (Nev. September 13, 2018) (tender of the superpriority
15 amount prior to foreclosure results in buyer taking property subject to deed of trust).

16 **A. Stay of the Case**

17 A district court has the inherent power to stay cases to control its docket and promote the
18 efficient use of judicial resources. Landis v. North Am. Co., 299 U.S., 248, 254-55 (1936);
19 Dependable Highway Exp., Inc. v. Navigators Ins. Co., 498 F.3d 1059, 1066 (9th Cir. 200). A
20 stay is no longer necessary in this action where the certified question has already been decided.

21 **B. Briefing Schedule**

22 The parties may either file a stipulation or move the Court for a modified discovery plan
23 and scheduling order as necessary. If the parties fail to do so, dispositive motions are due no later
24 than thirty (30) days after the entry of this order. Any future dispositive motions must address the
25 most recent case law applicable to the issues in this action.

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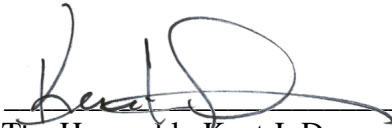
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1 **II. Conclusion**

2 Accordingly, IT IS HEREBY ORDERED that the stay in this action is lifted;

3 IT IS FURTHER ORDERED that stipulations, motions to modify the discovery plan and
4 scheduling order, or in the absence of such stipulations or motions, dispositive motions are due
5 within thirty (30) days after the entry of this order.

6 Dated this 18th day of July, 2019.

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11 The Honorable Kent J. Dawson
12 United States District Judge
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